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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No.

BOSTON SAND & GRAVEL COMPANY,
PETITIONER,
v.
UNITED STATES OF AMERICA,
RESPONDENT.

NOTICE.

The respondent is hereby notified that the annexed petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit and the annexed brief in support thereof will be submitted to the Supreme Court of the United States at the opening of court on the third day of October, 1927, or as soon thereafter as counsel can be heard.

Dated August 30, 1927.

FOYE M. MURPHY,
Counsel for Petitioner,
BLODGETT, JONES, BURNHAM & BINGHAM,
Proctors.

To JOHN G. SARGENT, *Attorney-General of the United States,*
Proctor for the UNITED STATES OF AMERICA.

WASHINGTON, September 19, 1927.

The foregoing notice is hereby accepted and delivery of a copy of the petition for Writ of Certiorari and brief in support thereof is hereby acknowledged.

JOHN G. SARGENT,
Proctor for the UNITED STATES OF AMERICA.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No.

BOSTON SAND & GRAVEL COMPANY,
PETITIONER,
v.
UNITED STATES OF AMERICA,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of Boston Sand & Gravel Company respectfully represents to this Honorable Court as follows:

On August 9, 1918, the steam lighter Cornelia, owned and operated by your petitioner, while proceeding outbound from the port of Boston through Broad Sound channel was in collision with the United States destroyer Bell, as a result of which collision the Cornelia was ripped open, beached and became a total loss.

By virtue of a special Act of Congress, approved May 15, 1922 (Record, p. 70), your petitioner on May 29, 1922, brought a libel in the United States District Court for the District of Massachusetts against the United States of America to recover damages arising out of said collision. In said District Court the Cornelia was held solely at fault and the libel was dismissed (298 Fed. Rep. 768). Upon appeal, the Circuit Court of Appeals for the First Circuit held both vessels at fault (7 Fed. Rep. 2d, 278) and a mandate issued to the District Court reversing the final decree of said court and directing further proceedings not inconsistent with the opinion. A Commissioner there-

upon found (Record, pp. 9, 43) total damages for the libellant (no claim of damage being made by the respondent) in the amount of $91,084.68, and your petitioner was awarded one-half of this amount, i. e., $45,542.34, which findings were confirmed by the District Court (Record, pp. 48, 50) (16 Fed. Rep. 2d, 643). Following the usual practice in said Circuit, the Commissioner made no finding as to interest, but reported the data from which interest could be computed. Thereupon your petitioner filed a motion seeking interest upon the various amounts of damages as found by the Commissioner (Record, p. 47). Said motion was disallowed (Record, p. 48) solely on the ground of lack of authority of the court and not by reason of any exercise of discretion of the court "on the authority of *Nantasket Beach Steamboat Company* v. *United States*, 297 Fed. 656". The decree of the District Court in accordance with this ruling omitted interest (Record, p. 48). Appeal was duly claimed, and the Circuit Court of Appeals for the First Circuit on June 4, 1927, disallowed interest (19 Fed. Rep. 2d, 744; 1927 A. M. C. 1239, Record, p. 69) and later denied libellant's petition for a rehearing upon the question of interest (Record, p. 89).

A certified copy of the agreed record in the Circuit Court of Appeals is herewith furnished as part of this application.

Your petitioner respectfully prays that said petition may be allowed for the following reasons:

1. The question presented is important, affecting as it does many cases now pending in the federal courts involving large sums of money.

2. There exists at present in the First and Second Circuits a conflict of law upon this question of allowance of interest.

3. The Circuit Court of Appeals for the First Circuit gave weight to a certain discussion in Congress immaterial, irrelevant, incompetent and not a part of the evidence or record in the present case.

4. The doctrine of immunity of the United States from liability for interest has no application to interest as an item of damages in a collision case in admiralty.

5. The United States of America has authorized by the special Act of Relief in the present case the allowance of interest against it in this action.

In support of these contentions the Petitioner respectfully submits its brief hereto subjoined.

WHEREFORE your petitioner respectfully prays that a Writ of Certiorari may issue out of and under the seal of this court directed to the United States Circuit Court of Appeals for the First Circuit commanding said court to certify and send to this Honorable Court on a day certain to be therein designated a transcript of the court record and all material proceedings of said Circuit Court of Appeals, to the end that said case may be reviewed and determined by this court upon said question of interest as provided by the law and practice of a court of admiralty, and that your petitioner may have such other and further relief in the premises as to this court may seem just and proper.

BOSTON SAND & GRAVEL COMPANY,
by PAUL P. BIRD,
President and General Manager.

COMMONWEALTH OF MASSACHUSETTS.
SUFFOLK, SS. BOSTON, September 16, 1927.

Paul P. Bird, being duly sworn, deposes and says that he is president and general manager of the Boston Sand & Gravel Company, petitioner above named, and that the matters stated in the foregoing petition are true to the best of his knowledge, information and belief.

PAUL P. BIRD.

Subscribed and sworn to before me this sixteenth day of September, 1927. Margaret C. McManus

~~FOYE M. MURPHY~~, [SEAL]
Notary Public.

I hereby certify that the foregoing petition is presented in good faith and not for the purpose of delay, and that in my opinion the case is a proper one for the issuance of a Writ of Certiorari.

FOYE M. MURPHY,
Counsel for the Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

No.

BOSTON SAND & GRAVEL COMPANY, PETITIONER,

v.

UNITED STATES OF AMERICA, RESPONDENT.

BRIEF FOR THE PETITIONER

IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

STATEMENT OF THE CASE.

The question presented by this petition is whether your petitioner is entitled to recover interest as a part of its damages in a suit brought in admiralty in the United States District Court for the District of Massachusetts by virtue of a special Act of Congress which allows the claim of the owner of the steam lighter Cornelia to be submitted to said court

> "under and in compliance with the rules of said court sitting as a court of admiralty; and that the said court shall have jurisdiction to hear and determine the whole controversy and to enter a judgment or decree for the amount of the legal damages sustained by reason of said collision, if any shall be found to be due either for or against the United States, upon the same principle and measure of liability with costs in like cases in admiralty between private parties with the same rights of appeal". (Record, p. 70.)

The Circuit Court of Appeals for the First Circuit has denied its right to allow interest. This contention is challenged by your petitioner for the following reasons, as set

forth in abstract in its petition, to which this brief is hereto subjoined:

I. The question presented is important, affecting as it does many cases now pending in the Federal Courts involving large sums of money.

Proctor for the United States of America has stated in his brief in the Circuit Court of Appeals that there were 140 libels by authority of private Acts demanding damages of $5,000,000, and in addition 142 libels in the Bering Sea cases, pending in the Federal Courts (see Record, p. 82) to which facts the Circuit Court of Appeals for the First Circuit refers as follows: "under these conditions a decision by the Supreme Court will doubtless and appropriately be sought". 19 Fed. Rep. 2d, 744 at 747 (Record, p. 75).

II. There exists at present in the First and Second Circuits a conflict of law upon the question of allowance of interest against the United States of America.

The Circuit Court of Appeals for the *First Circuit* in the present case disallowed interest as a matter of right (Record, p. 69; 19 Fed. Rep. 2d, 744), whereas the Circuit Court of Appeals for the *Second Circuit* in the cases of *New York & Cuba Mail SS. Co.* v. *United States*, 16 Fed. Rep. 2d, 945, and *Texas Company* v. *United States*, 16 Fed. Rep. 2d, 948, allowed interest, all three cases resting upon special Acts of Congress in form "identical mutatis mutandis" (see Opinion, Circuit Court of Appeals, Record, p. 70), thereby producing a conflict of law in the First and Second Circuits.

(See for Special Acts record, p. 70, and Appendices hereto A and B.)

III. The Circuit Court of Appeals for the First Circuit gave weight to a certain discussion in the Committee on Claims in the United States Senate immaterial, irrelevant, incompetent and not a part of the evidence or record in the present Case.

Proctor for the United States of America in his brief in the Circuit Court of Appeals inserted reference to and discussion

of other special Acts in which all reference to interest had been deleted in Committee and though this matter was objected to by proctor for the libellant, nevertheless the Circuit Court of Appeals has given some weight to this discussion in its determination of the question of interest (Record, p. 74).

It is commonly known that the Committees on Claims and Congress deal individually with these special relief Acts, and influenced by the merits of the case, in some cases permit the interest phrase if drawn in the bill to remain (see 43 Stat. Part 2, p. 1369, June 3, 1924, affording relief to Colonial Navigation Company owner American steamship Lexington; 43 Stat. Part 4, p. 1374, June 7, 1924, affording relief to Thompson-Vache Boat Company, owner of the steamship Floyd; 43 Stat. Part 2, p. 1589, March 3, 1925, affording relief to Mallory Steamship Company, owner of the steamship Nueces); in other cases, as those selected by proctor for the United States of America in his brief, strike out the interest clause if inserted and in some cases the Committee has even determined the whole case on its merits and reported out a specific sum as relief.

The discussion in the Senate referred to by the Circuit Court of Appeals took place four years after the passage of the special Act in the present case. There was no striking out of the word "interest" in the present case as was done in that case. The petitioner respectfully submits that no intent of Congress as to the allowance of interest should be drawn except from the situation surrounding the particular Act under consideration, and that said discussion referred to by the Circuit Court of Appeals, not having appeared in the record of the present case, and not connected with the present case in any way, is immaterial, irrelevant and incompetent.

IV. The doctrine of immunity of the United States from liability for interest has no application to interest as an item of damages in a collision case in admiralty.

It is one of the fundamental principles of admiralty jurisprudence that an admiralty court "is bound to determine the cases submitted to its cognizance, upon equitable principles, and according to the rules of natural justice".

Benedict, Admiralty, 5th Ed. Vol. 1, Sec. 223.
The Kalfarli, 277 Fed. 391, 395 (C. C. A. 2d).

Mr. Justice Story in

The Virgin, 8 Pet. 538, 549 (8 L. Ed. 1036),

says:

> "Such courts in the exercise of their jurisdiction are not governed by the strict rules of the common law but act upon enlarged principles of equity."

The maxim of ***restitutio in integrum*** is the accepted rule in collision cases,

The Baltimore, 8 Wall. 377, 385,

and is defined as complete indemnity for the damages suffered.

The Aleppo, 7 Ben. 120, 1 Fed. Cas. 342, 343.

Interest is part of the damages; it is given "in lieu of the profit which might have been derived from the subsequent use of his vessel".

Fabre v. *Cunard Steamship Co.*, 53 Fed. 288, 293.

See also *Guibert* v. *The British Ship George Bell*, 3 Fed. 581, 588.

It satisfies the rule of ***restitutio in integrum***, which is the right of the injured party.

The Rhode Island, 20 Fed. Cas. 636, 638.

In *The America*, 1 Fed. Cas. 604,

it was said (p. 605):

> "Where the value of the thing lost, or the cost of repairs and the like, are the test or measure of recovery, and the amount of damages becomes mere matter of computation, interest is as necessary to indemnity as the allowance of the principal sums."

In *The Rabboni*, 53 Fed. 952, 957,

Judge Putnam said:

> "When not more than the value of the vessel and pending freight is given, interest should justly be added, to make complete restitution."

The Reno, 134 Fed. 555, 556.
Eastern SS. Co. v. *Great Lakes Dredge & Dock Co.*, 256 Fed. 497, 505.

In *United States* v. *Rogers*, 257 Fed. 397, 399, the court says:

> "In the rule of immunity of the government from liability for interest, the term 'interest' is generally used as meaning compensation for the use or forbearance of money, or damages for its detention."

As used in collision cases "interest" means an essential part of the damages flowing from the tort.

The question of interest in the present case is somewhat analogous to the situation where a taxpayer seeks by suit to recover a tax illegally exacted. The United States Supreme Court has held that he is entitled to interest from the time of the illegal exaction.

Treat v. *Farmers Loan & Trust Co.*, 185 Fed. 760.
Erskine v. *Van Arsdale*, 15 Wall. 75,

in which latter case Waite, C. J. (p. 77) noted that the ground for the refusal to allow interest is the presumption that the Government is always ready and willing to pay its debts. There was no statutory provision for the allowance of interest in the *Erskine* case and no stipulation to pay it, yet it was allowed.

Similarly, interest has been awarded the owner of a vessel illegally condemned in prize cases, in the absence of statute or stipulation, in decrees against the United States and the captors jointly.

The Labuan, Blatchford's Prize Cases, 165.
The Sybil, Blatchford's Prize Cases, 615.
The Nuestra Senora de Regla, 108 U. S. 92, 104.

In *The Paquete Habana*, 189 U. S. 453, 467, interest was recognized as proper though the decree was entered solely against the United States.

In *United States* v. *The Thekla*, 266 U. S. 328, the court says (p. 341):

> ". . . the reasons are strong for not obstructing the application of natural justice against the Government by technical formulas when justice can be done without endangering any public interest."

We submit, therefore, that where the United States sheds its sovereign immunity and becomes a party respondent, it is thereby subject to legal damages and interest is part of these damages. This is true though a statute does not authorize its allowance. The appellant, however, need not base its claim for interest on this general ground. The relief Act in the present case includes interest.

V. The United States of America has authorized by the special Act of relief in the present case the allowance of interest against it in this action.

This Act provides:

> " That the *claim* of the owner of the steam lighter Cornelia rising out of a collision between said steam lighter and the United States destroyer Bell in Broad Sound, Boston Harbor, Massachusetts, on the 9th day of August, 1918 . . . may be submitted to the United States Court for the District of Massachusetts, under and in compliance with the rules of said court *sitting as a court of admiralty*; and that said court shall have jurisdiction to hear and determine the whole controversy and to enter a judgment or decree for the amount of the *legal damages* sustained by reason of said collision, if any shall be found to be due either for or against the United States, *upon the same principle and measure of liability with costs in like cases in admiralty between private parties with the same rights of appeal*. . . ." (Italics ours.)

Special Acts with identical material phraseology have been construed as authorizing the allowance of interest.

(a) *The Commonwealth*, 297 Fed. 651, Dist. Court S. D. N. Y. (1923), where under a special Act (quoted in full in

the report) the New England Steamship Company brought a suit rising out of a collision between its steamer Commonwealth and the United States battleship New Hampshire in Newport Harbor, R. I.

(b) *New York & Cuba Mail SS. Co.* v. *United States*, 16 Fed. 2d, 945, C. C. A. 2d Circuit, January 10, 1927, where the owner of the S. S. Esperanza, in collision with the United States destroyer Conner, brought a libel under a special Act passed nine months later and identical in form in all material respects with the Act in the present case. (See Appendix A to this brief.) In the District Court, 300 Fed. 827, nothing was said as to interest. On appeal the Circuit Court of Appeals of the Second Circuit held that the owner of the Esperanza was entitled to interest, and modified the decree of the District Court by awarding interest on the claim of the owner of the Esperanza, saying (p. 947):

"By the authority of the statute, the appellee may maintain its libel, as it would between private parties. In a suit between private parties in admiralty growing out of collision, it has long been settled that interest is awarded as part of the measure of damages. The object of the award of damages is to place the injured party in the same pecuniary position as he would have been in but for the collision.

"This principle has been referred to in admiralty as that of the right to a full and complete indemnity. The phrase 'the legal damages . . . found to be due . . . upon the same principles and measure of liability, as in like cases in admiralty between private parties' when given the interpretation intended by Congress in this enactment, included an award of interest, as is allowed in the case of a litigation between private parties in admiralty. The United States is not liable to pay interest in the absence of a statutory provision to that effect, except where it has contracted to pay it, or where the United States submits itself to the jurisdiction of the Court, or if sued, places itself in the position of a private party. *United States* v. *Thekla*, 266 U. S. 340, 45 S. Ct. 112, 69 L. Ed. 313. Inter-

est may be provided for by the name of legal damages. Congress has done so in granting this relief to private parties, where a vessel has been injured in collision with a public vessel. We must give to the language employed its ordinary and accepted meaning. We must presume that Congress intended that the principle of restitutio in integrum should be applied, as it is in cases in admiralty of like nature between private parties. *Paquete Habana*, 189 U. S. 453; *Nuestra Senora de Regla*, 108 U. S. 92. . . .

"The present Act of Congress, upon which this libel is maintainable, provides for the jurisdiction, adjudication of conflicting claims of the government and a citizen, and requires such adjudication including the measure of damages, to be made in the same legal method as private controversies are adjudicated. The intention of Congress is clear and explicit to grant full indemnity in the award against the United States, if any is made. Indemnity is not complete without interest. The Admiralty Courts in suits against private persons have always followed this rule. We think Congress intended that it should be followed in this instance."

(c) *Texas Company* v. *United States*, 16 Fed. 2d, 948, C. C. A. 2d Circuit, January 10, 1927, where a suit was brought by the owner of the steamship Texas under and by authority of a special Act of Congress identical in all material parts with the Enabling Act in the present case and approved six months prior thereto. (See Appendix B of this brief.) The District Court awarded interest to the owner of the Texas, 11 Fed. 2d, 981, holding that whether the United States claims interest or not is immaterial. This decree was affirmed by the Circuit Court of Appeals of the Second Circuit (16 Fed. 2d, 948).

In the *Texas Company* case as in the present case, no libel was filed by the United States.

In the *New York & Cuba Mail SS. Co.* and the *Texas Co.* cases the petitions of the United States of America for writ of certiorari were denied. (47 Supreme Court Reporter, 765.)

The Act in the present case is the same as the Acts in the *New York & Cuba Mail SS. Co.* and the *Texas Co.* cases. They

were all passed contemporaneously, and the same reasons for allowing interest apply to the suits brought thereunder.

It is not necessary that the word "interest" appear in the Act to authorize its allowance.

In *United States ex rel. Angarica* v. *Bayard*, 127 U. S. 251, it was expressly noted (p. 260) that interest is recoverable against the government where the Act included it "*either* by the name of interest *or by that of damages*". In the Enabling Act in the present case there was no necessity for Congress to insert the phrase "including interest" when it provided for the entry of a decree for the amount of "the legal damages . . . found to be due . . . upon the same principles and measure of liability with costs, as in like cases in admiralty between private parties" inasmuch as in such a case in admiralty between private parties interest so called is awarded as a component part of the damages.

This position is in accord with the construction placed on other statutes where no specific reference is made to interest.

Miller v. *Robertson*, 266 U. S. 243, Sec. 9 (Trading with Enemy Act, c. 106, 40 Stat. 411, 419).

Banco Mexicano v. *Deutsche Bank*, 263 U. S. 591, 603 (holding suit under above Act to be against United States of America).

Standard Oil Co. v. *United States*, 267 U. S. 76 (suit in admiralty under Act of Sept. 2, 1914, c. 293, Sec. 5, 38 Stat. 711, 712, to recover Government insurance).

Seaboard Air Line Ry. Co. v. *United States*, 261 U. S. 299 (Lever Act, Sec. 10, c. 53, 40 Stat. 276, 279).

United States v. *Rogers*, 255 U. S. 163 (Land Taking Act of Aug. 1, 1888, c. 728, 25 Stat. 357).

Hull No. 5 C. G. T. v. *United States*, 1927 A. M. C. 485 (Requisition Act).

See also Sec. 1117 of Title XI of the Revenue Act of 1926.

A special Act containing language strikingly similar to the present Act was construed in

United States v. *McKee et al.*, 91 U. S. 442,

where by the Act of June 8, 1972, the claim of the heirs of Colonel Francis Vigo, for money and supplies furnished the troops under command of General George Rogers Clarke in the year 1778, during the Revolutionary War, was referred to the Court of Claims

> " . . . with full jurisdiction to adjust and settle the same; and, in making such adjustment and settlement, the said court shall be governed by the rules and regulations heretofore adopted by the United States in the settlement of like cases. . . ."

Although this Act makes no reference to interest, it was held properly allowed.

It requires no straining of the language of the Enabling Act to construe it as authorizing the allowance of interest, upon applying the cardinal canon of statutory construction that

> "it is the duty of the court to give effect, if possible, to every clause and word of a statute". (*Montclair* v. *Ramsdell*, 107 U. S. 147, 152.)

The Act is entitled: "An Act for the *relief* of the owner of the steam lighter Cornelia." The general purpose of Congress in authorizing this suit was, therefore, to give "relief" to the appellant, and its phraseology should be so construed as to effectuate this general purpose.

> *Porto Rico Railway, Light & Power Co.* v. *Mor*, 253 U. S. 345, 348.
>
> *Glover* v. *United States*, 164 U. S. 294,

in which latter case Mr. Justice White says (p. 297):

> "In interpreting the Act, therefore, we must be guided not by any mere technicality, but must read its provisions by the light of the cardinal rule, commanding that the words must be apprehended, not in a forced and purely technical way, but in their general acceptation, and that *the law must be interpreted in accordance with its spirit so as to effectuate the purpose intended to be accomplished thereby*. *Mallard* v. *Lawrence*, 16 How. 251; *Smythe* v. *Fiske*, 23 Wall. 374." (Italics ours.)

The Act authorizes the submission of the "*claim* of the Boston Sand & Gravel Company to the District Court". The claim includes interest. The court is given jurisdiction "to enter a judgment or decree for the amount of the *legal damages*", which words had a judicially settled meaning at the time this Act was passed. In admiralty "legal damages" included interest as a part thereof and it must be presumed that the words were used in that sense by Congress.

United States v. *Merriam*, 263 U. S. 179, 187.

Had Congress intended that interest should not be included "it would have been easy to have said so" (*Tiger* v. *Western Investment Co.*, 221 U. S. 286, 308), as it did relative to actions in the Court of Claims (Judicial Code, Sec. 177) (U. S. Comp. Stat. 1916, Sec. 1168).

Finally, the Act authorizes the entry of a decree for the amount of the legal damages

> "*upon the same principle and measure of liability with costs as in like cases in admiralty between private parties*".

We submit that there is no ambiguity in this language. By authorizing the submission of the claim to the District Court "under and in compliance with the rules of said court sitting as a court of admiralty" Congress indicated the practice under which the proceedings should be regulated. When it continued and provided that the amount of the damages should be computed "upon the same principle and measure of liability with costs as in like cases in admiralty between private parties", Congress clearly indicated its intention that as to the amount of damages awarded to the appellant, including interest, the United States should be in no more favorable position than a private litigant.

We submit, therefore, inasmuch as the Enabling Act gives *relief*, allows a *claim*, which includes interest, to be sued for and determined according to the principles and measure of liability obtaining in suits between private parties, in which latter suits the courts have the power to award interest in the proper exercise of their discretion, that the court in the present case should be construed to have the same power in order to effect

the declared and apparent purpose of the Act and render justice to your petitioner.

CONCLUSION.

The petitioner therefore respectfully submits that the petition should be granted and a Writ of Certiorari issue as prayed for in said petition.

Respectfully submitted,

FOYE M. MURPHY,

Counsel for Petitioner.

APPENDIX "A".

42 Stat. 1778.

An Act for the relief of the owners of the steamship Esperanza.

Private, No. 192, 67th Congress.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the claim of the New York and Cuba Mail Steamship Company, owner of the American Steamship Esperanza, against the United States for damages alleged to have been caused by collision between said vessel and the United States destroyer Conner on the 15th day of February, 1918, off Barnegat Light, New Jersey, may be sued for by the owner of the said American steamship Esperanza in the United States District Court for the Southern District of New York, sitting as a Court of Admiralty, and acting under the rules governing such court, and said court shall have jurisdiction to hear and determine such suit and to enter judgment or decree for the amount of such damages and costs, if any, as shall be found to be due against the United States in favor of the owner of the said American steamship Esperanza, or against the owner of the said American steamship Esperanza, in favor of the United States, upon the same principles and measures of liability as in like cases in admiralty between private parties, and with the same rights of appeal: *Provided,* that such notice of the suit shall be given to the Attorney General of the United States as may be provided by order of the said court, and it shall be the duty of the Attorney General to cause the United States attorney in such district to appear and defend for the United States: *Provided further,* that said suit shall be brought and commenced within four months of the date of the passage of this Act.

Approved, February 28, 1923.

APPENDIX "B".

42 Stat. 1569.

An Act authorizing the owners of the steamship Texas to bring suit against the United States of America.

Private, No. 9, 67th Congress.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the claim of the owners of the steamer Texas arising out of a collision between said steamer and the United States steamer Frederick der Grosse, off Tompkinsville, Staten Island, in the harbor of New York, on the 3d day of September, 1917, for and on account of the losses alleged to have been suffered in said collision by the owners of said steamer Texas by reason of damages to and detention of said steamer may be submitted to the United States District Court for the Southern District of New York, under and in compliance with the rules of said court sitting as a Court of Admiralty; and that the said court shall have jurisdiction to hear and determine the whole controversy and to enter judgment or decree for the amount of the legal damages sustained by reason of said collision, if any shall be found to be due either for or against the United States, upon the same principle and measure of liability, with costs, as in like cases in admiralty between private parties, with the same rights of appeal: *Provided*, that such notice of the suit shall be given to the Attorney General of the United States as may be provided by order of the said court, and it shall be the duty of the Attorney General to cause the United States attorney in such district to appear and defend for the United States: *Provided further*, that said suit shall be brought and commenced within four months of the date of the passage of this Act.

Approved, November 17, 1921.

FILED
FEB 16 1928
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

No. 15

BOSTON SAND & GRAVEL COMPANY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

BRIEF FOR THE PETITIONER.

JOHN W. DAVIS,
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 551.

BOSTON SAND & GRAVEL COMPANY,
PETITIONER,
v.
UNITED STATES OF AMERICA,
RESPONDENT.

BRIEF FOR THE PETITIONER.

OPINION OF THE COURT BELOW

The opinion of the Circuit Court of Appeals for the First Circuit is reported at 19 Fed. (2d) 744, and also at page 47 of the record. This is the only opinion dealing with the question at issue on this review. The ruling of the trial judge on that question is to be found at page 37 of the record.

JURISDICTION

The present writ was granted presumably to resolve a conflict of the Circuit Courts of Appeals on an important issue of law. The decision below is also in conflict with the opinion of this court in *United States ex rel. Angarica* v. *Bayard*, 127 U. S. 251.

The present case was preceded by two decisions of the Circuit Court of Appeals for the Second Circuit, *New York and Cuba Mail Steamship Company* v. *United States*, 16 Fed. (2d) 945, and *Texas Company* v. *United States*, 16 Fed. (2d) 948, in which decisions results contrary to that in the present case

were reached under private acts of Congress which were, *mutatis mutandis*, identical with the act involved in the present case. The Government's petitions for writs of certiorari were denied in those cases on May 31, 1927 (R., pp. 58–60). The present case was decided by the Circuit Court of Appeals for the First Circuit on June 4, 1927, and the writ herein granted November 21, 1927 (R., p. 61).

STATEMENT OF THE CASE

On August 9, 1918, the steam lighter Cornelia, owned and operated by your petitioner, while proceeding outbound from the port of Boston through Broad Sound channel was in collision with the United States destroyer Bell, as a result of which collision the Cornelia was ripped open, beached and became a total loss.

By virtue of a special Act of Congress, approved May 15, 1922, *infra* page 3 (R., p. 47), your petitioner on May 29, 1922, brought a libel in the United States District Court for the District of Massachusetts against the United States of America to recover damages arising out of said collision. In said district court the Cornelia was held solely at fault and the libel was dismissed (298 Fed. Rep. 768). Upon appeal, the Circuit Court of Appeals for the First Circuit held both vessels at fault (7 Fed. Rep. 2d, 278) and a mandate issued to the district court, reversing the final decree of said court and directing further proceedings not inconsistent with the opinion. A commissioner thereupon found (R., pp. 8–34) total damages for the libellant (no claim of damage being made by the respondent) in the amount of $91,084.68, and your petitioner was awarded one-half of this amount, *i. e.*, $45,542.34, which findings were confirmed by the district court (R., pp. 39–43) (16 Fed. Rep. 2d, 643) and sustained on appeal to the Circuit Court of Appeals for the First Circuit (unreported).

Following the usual practice in said circuit, the commissioner made no finding as to interest, but reported the data from which interest could be computed. Thereupon your petitioner filed a motion seeking interest upon the various amounts of damages as found by the commissioner (R., p. 37). The motion was disallowed (R., p. 37), not by reason of the exercise of discretion by the court, but solely on the ground of

lack of power in the court "on the authority of *Nantasket Beach Steamboat Company* v. *United States*, 297 Fed. 656", wherein the same judge (Brewster) at page 658 had said:

> "If I regard the matter as one of discretion only, I should feel disposed to award interest, but in the absence of special circumstances, I am not inclined to disagree with Judge Hale [in *Pennell* v. *United States*, 162 Fed. 75]."

The *Pennell* case, as will be shown, rested on a mistaken application of a precedent to facts totally different from that in the case in which the precedent had been established.

The decree of the District Court in accordance with this ruling omitted interest (R., pp. 37, 38). Appeal was duly claimed, and the Circuit Court of Appeals for the First Circuit on June 4, 1927, disallowed interest (19 Fed. Rep. 2d, 744; 1927 A. M. C. 1239, R., p. 47) and later denied libellant's petition for a rehearing upon the question of its allowance (R., p. 60). The owner of the Cornelia thereupon filed its petition for the writ of certiorari upon which the case is now here for review.

THE QUESTION PRESENTED

The sole question presented on this appeal is whether the petitioner is entitled to recover interest as a part of its damages in a suit in admiralty in the United States District Court brought under the authority of the following special act of Congress:

> "(Private—No. 67—67th Congress.)
> (S. 1814)
>
> "An Act for the relief of the owner of the steam lighter Cornelia.
>
> "Be it enacted by the Senate and House of Representatives of the Unites States of America in Congress assembled, That the claim of the owner of the steam lighter Cornelia rising out of a collision between said steam lighter and the United States destroyer Bell in Broad Sound, Boston Harbor, Massachusetts, on the 9th day of August, 1918, for and on account of the losses alleged to have been suffered in said collision by the owner of said steam lighter Cornelia by reason of damages to or the loss of said steam

lighter, her boats, engines, boilers, tackle, apparel, furniture, and supplies, may be submitted to the United States Court for the District of Massachusetts, under and in compliance with the rules of said court sitting as a court of admiralty; and that the said court shall have jurisdiction to hear and determine the whole controversy and to enter a judgment or decree for the amount of the legal damages sustained by reason of said collision, if any shall be found to be due either for or against the United States, upon the same principle and measure of liability with costs in like cases in admiralty between private parties with the same rights of appeal: Provided, That such notice of the suit shall be given to the Attorney General of the United States as may be provided by order of the said court, and it shall be the duty of the Attorney General to cause the United States attorney in such district to appear and defend for the United States: Provided further, That said suit shall be brought, and commenced within four months of the date of the passage of this Act.

"Approved May 15, 1922."

POINT I

THE WORD "DAMAGES" IN AN ENABLING ACT IS SUFFICIENT TO GIVE TO THE CLAIMANT INTEREST AGAINST THE GOVERNMENT, WHENEVER INTEREST WOULD BE ALLOWED AS DAMAGES IN LIKE CIRCUMSTANCES BETWEEN PRIVATE PERSONS.

In *United States ex rel Angarica v. Bayard*, 127 U. S. 251, this Court, in denying interest to the claimant therein, stated the law applicable to situations such as that now before this Court. It said at page 260:

> "The case, therefore, falls within the well-settled principle, that the United States are not liable to pay interest on claims against them, in the absence of express statutory provision to that effect. It has been established, as a general rule, in the practice of the government, that interest is not allowed on claims against it, *whether such claims originate in contract or in tort*, and whether they arise in

the ordinary business of administration or under private acts of relief, passed by Congress on special application. *The only recognized exceptions are, where the government stipulates to pay interest and where interest is given expressly by an act of Congress, either by the name of interest or by that of damages.*

"This appears from a succession of the opinions of the Attorneys General of the United States, given by Attorneys General Wirt, Crittenden, Legare, Nelson, Johnson Cushing and Black, and appearing in the following volumes any pages of those opinions, as published: 1, 268; 1, 550; 1, 554; 3, 635; 4, 14; 4, 136; 4, 286; 5, 105; 7, 523; 9, 57; and 9, 449." (Italics ours.)

Petitioner contends that the private act here under consideration is one "where interest is given expressly by an act of Congress . . . by the name . . . of damages".

It is obvious from the foregoing excerpt from the *Angarica* opinion that the statement of the law contained therein was intended to comprehend the prior practice of the Government as expounded in the opinions of the Attorneys General there referred to.

Examination of these opinions shows that that of Attorney General Cushing reported in 7 Op. A. G. 523, is the most pertinent to the stated exception to the general rule. That exception is in the exact words of the syllabus to this Cushing opinion. The inference seems, therefore, inescapable that the words were used by this Court in the same sense as that in which they were used by the Attorney General. Their meaning was not further expounded in this Court's opinion in the *Angarica* case, but in the body of the Cushing opinion, their meaning is explained as follows:

"There is another possible case of apparent, but not real, exception, if the case exists, and that is, of 'damages' provided by statute to be assessed against the Government. In one of the general acts above cited, a statute interest on the detention of money is the established rendering of the term 'damages'. (I Stat. at Large, p. 85.) *If, therefore, any such case of claim on the Government can be shown,* [illegible]

40.)

with color of demand for interest as 'damages', it will be no departure from the rule never to allow interest except on express requirement of statute." (Italics ours.)

That is to say, the word "damages" in a private enabling statute will be sufficient to give to a claimant the right to interest against the Government whenever interest would be allowed as damages in like circumstances if the claim had arisen between private parties. If, then, petitioner can show that interest in collision cases in admiralty is awarded as an element of damages, it is submitted that the presence of the words "legal damages" in the statute is, apart from the other reasons considered below, sufficient to conclude this case in favor of the petitioner.

POINT II.

INTEREST AS AWARDED IN COLLISION CASES IN ADMIRALTY BETWEEN PRIVATE PARTIES IS DAMAGES WITHIN THE PROPER LEGAL MEANING OF THAT TERM

Whether an award of interest is *as* damages or not depends on just one question—whether or not the interest has been stipulated for between the parties. If the interest has been stipulated for, it is part of the substantive obligation; if it has not, it is remedial in character—that is, it is damages.

Thus Sedgwick in his work on Damages (9th Edition) at pages 552-3 says:

> "Interest is the value of the use of money; the amount of compensation for withholding money. It bears the same relation to money that rent does to land, wages to labor, and hire to a chattel. It may be secured by an agreement, or it may be allowed as damages; in the former case the rate is usually stipulated in the agreement, in the latter it is usually fixed by legislation. It is not necessary, however, that the amount should be fixed by statute; for in the absence of a statute rate, the court will admit proof of the current rate, and will allow interest as damages at that rate.
>
> "Where interest is secured by an agreement it is given

by the court, not by way of damages, but as a substantive part of the debt; the consideration of this branch of the subject, therefore, does not come within the scope of this treatise. But in all cases where damages are claimed for the wrongful detention of money the allowance of interest is governed by the law of compensation, and, therefore, will be treated here."

Sutherland in his work on the same subject (4th Edition) is in accord:

"When expressly stipulated for to accrue during the period of forbearance it [interest] becomes, as it accrues, a positive addition to the principal and is thence a distinct and integral part of the debt, payable, unless otherwise agreed, when the principal is due, and in the same funds. As such it has a substantive character." (Page 936.)

"Interest is also recoverable for the detention of money after it is due. It is in many such cases recoverable of right and as a matter of law, independently of the discretion of a jury. It may also be claimed of right under various circumstances of contract and tort, on the value of property or things in action, and on the value of services, though such value has to be proved; on money lent, paid, had and received, as well as on divers other forms of loss to the plaintiff or gain to the defendant, capable of pecuniary estimate; and in such cases it is immaterial that there is no agreement for interest or forbearance. When the principal is due upon contract, of course the obligation or duty to pay interest for its detention results from the same contract and is recoverable thereon as damages for failure to perform; and when recoverable in tort it is chargeable on general principles as an additional element of damage for the purpose of full indemnity to the injured party." (Page 939.)

"In another class of cases, similar to those last mentioned, but where the right to interest is less obvious, and in some others where the injury cannot be measured by any precise pecuniary standard, interest is allowable under the advice of the court in the discretion of the jury." (Page 940.)

This distinction is widely supported in the cases. See, for example, *The Santa Maria*, 10 Wheat. 431, 445; *Williams* v. *American Bank*, 4 Metc. 317, 320; *Dana* v. *Fiedler*, 12 N. Y. 40; *Parrott* v. *Knickerbocker Ice Co*., 46 N. Y. 361.

It seems perfectly clear that this same distinction between interest as a part of the substantive right and interest by way of remedy is the distinction that this Court had in mind in the *Angarica* case. The opinion in that case speaks of the Government's stipulating to pay interest on the one hand and on the other of provision for interest by special act of Congress, either by the name of interest or by the name of damages. The first, clearly, is the case of interest paid as part of the substantive obligation and the latter, that of interest, paid by way of remedy.

Examples of tort cases in which Congress has omitted to provide for interest "expressly . . . either by the name of interest or by that of damages" are to be found among the opinions of the Attorneys General cited by this court in the *Angarica* case. Thus, for example, in the statute involved in the opinion of Attorney General Crittenden, 3 Op. A. G. 635, the court was authorized "to receive and examine and adjudge all cases of claims for losses occasioned by the troops" in the service of the United States in 1812 and 1813. Another example is the statute in *Watts* v. *United States*, 129 Fed. 222, fully set forth and discussed in this brief *infra* page 19.

In the present case, the statute after providing "that the claim . . . for . . . losses . . . may be submitted to the . . . court" goes on to provide "that the said court shall have jurisdiction . . . to enter a judgment or decree for the amount of the legal damages . . . upon the same principle and measure of liability with costs in like cases in admiralty between private parties . . ." If Congress intended nothing additional by the second provision of the statute just quoted, its mode of expression was certainly inexcusably redundant.

It is well settled American maritime law that in collision cases arising between private parties, interest is to be awarded as an element of damages.

The Umbria, 166 U. S. 404, 421;
The Scotland, 118 U. S. 507, 518;

The America, 1 Fed. Cas. No. 284;
The Rhode Island, 20 Fed. Cas. No. 11,740a;
Guibert v. *The British Ship, George Bell*, 3 Fed. 581, 588;
Fabre v. *Cunard S. S. Co.*, 53 Fed. 288, 293;
The Rabboni, 53 Fed. 952, 957;
The Reno, 134 Fed. 555, 556;
In re Great Lakes Dredge & Dock Co., 250 Fed. 916, 917; 256 Fed. 497, 505;
New York & Cuba Mail S. S. Co. v. *United States*, 16, Fed. (2d) 945;

The rule is the same in England.

The Dundee (1827) 2 Haggard, 137;
The Hebe (1847) 2 W. Robinson, 530;
The Kate [1899] Prob. Div. 165;
The Kong Magnus [1891], Prob. Div. 223.

Roscoe in his work on Damages in Maritime Collisions (2d Ed.) at page 5 discusses the general principle of compensation applicable in collision cases:

"The object of the award of damages arising out of a collision is to place the owner of the lost or injured ship as nearly as may be in the same pecuniary position as he would have been in but for the collision. In a series of judgments in the Admiralty Court this principle has been called that of *restitutio in integrum*—'the right to a full and complete indemnity'—and this is therefore the measure or standard of damages which are recoverable by the owner of a ship which has been injured in a collision by a wrongful act on the part of another person."

And at page 39 he points out that:

"If a vessel is totally lost when in ballast her owner is entitled to receive interest from the date of the collision to the date of payment on the sum awarded to him."

In *The Kong Magnus*, *supra*, Sir Charles Butt, in his opinion, says:

"It seems clear that a different rule exists in collision

> suits in the Admiralty divisions, and existed in the Court to which it has succeeded, to that which prevails in a common law court as to including interest in the damages. A Court of Common Law does not include interest in the damages assessed, because, as I understand it, until a man knows what amount of the principal liability he would have to discharge, he could not know and pay into Court the amount of interest, and, therefore, was not in any default. On the other hand I presume the view of the Court of Admiralty has been that the person liable in damages, having kept the sum which ought to have been paid to the claimant, and having therefore been able to receive interest upon it, ought to be held to have received it for the person to whom the principal was payable."

The Government has attempted, and will, no doubt, again attempt, to escape the rule stated by this Court in the *Angarica* case by contending that interest in collision cases in admiralty cannot be "damages" because in collision cases refusal of interest to the successful libellant lies within the discretion of the admiralty court. There undoubtedly are rare cases which recognize that there is an element of discretion in the allowance of interest in collision cases. Examples are *The Scotland*, 118 U. S. 507, 518; *The Albert Dumois*, 177 U. S. 240, 255; *The Maggie J. Smith*, 123 U. S. 349, 356.

But this discretion belongs to the admiralty court only because

> "Such courts in the exercise of their jurisdiction are not governed by the strict rules of the common law but act upon enlarged principles of equity."

Story, J., in *The Virgin*, 8 Pet. 538, 549.

The existence of this judicial discretion as to the refusal of interest does not mean that the owner of an injured vessel has no right to interest as a part of his recovery. Quite the contrary; the discretion has so uniformly been exercised to allow interest that its allowance has become practically a rule of law in the absence of a showing of some extraordinary circumstance making it inequitable to allow it. But two circumstances are recognized as justifying the refusal of interest—laches

in bringing suit and vexatious appeals. *Benedict on Admiralty* (5th Ed.) p. 495; *Roscoe on Damages in Maritime Collisions* (2d Ed.) p. 41.

Admiralty courts continually refer to the allowance of interest as the usual rule. Thus *In re Great Lakes Dredge & Dock Co.*, 250 Fed. 916 (D. C. Mass. 1917), Judge Morton said (page 917):

> "It is a pure question of law whether interest should or should not be allowed. The case presents, so far as I can see, no special circumstances affecting the matter either way. The general rule should be ascertained and applied."

He then quoted with approval the following language of Wood, V. C., in *Straker* v. *Hartland*, 2 H. & M. 570, 575:

> "Then I find that the settled law of the court of admiralty is that interest is as much payable in cases of collision as if there had been a contract to pay interest, and that the damages are there held to be due at the date of the collision, and that interest is given from that time."

And that of Mr. Justice Holmes in *Frazer* v. *Bigelow Carpet Co.*, 141 Mass. 126:

> "Interest is allowed in the admiralty upon damages for collision, and other courts have adopted the admiralty doctrine." (Citing authorities.)

In *Managua Navigation Co.* v. *Aktieselskabet Borgestad*, 7 Fed. (2d) 990, 993, the Circuit Court of Appeals said:

> "The general rule is to allow interest from the date of the collision. *The Manitoba*, 122 U. S. 97, 7 S. Ct. 1158, 30 L. Ed. 1095; *Galveston Towing Co.* v. *Cuban S. S. Co.*, 195 F. 711, 115 C. C. A. 438; *The El Monte*, 252 Fed. 59, 164 C. C. A. 171. Nothing in this case appears to justify an exception to the general rule, and the decree would fall short of idemnifying the owner of the Borgestad for the loss it sustained, if interest is not allowed on the amount of such loss from the time it was actually sustained."

In *The America*, 1 Fed. Cas. No. 284, it was held:

> "Where the value of the thing lost or the cost of repairs and the like, are the test or measure of recovery, and the amount of damages become mere matter of computation, interest is as necessary to indemnity as the allowance of the principal sums."

See also *The J. J. Gilchrist*, 173 Fed. 666, 672; *New York & Cuba Mail S. S. Co.* v. *United States*, 16 Fed. (2d) 945, 947; and other cases cited *supra*, page 9.

This Court, speaking through Mr. Justice Brown, in *The Umbria*, 166 U. S. 404, also recognized that allowance of interest is the usual rule, stating, page 421:

> "There is nothing in the peculiar facts of the case to take it out of *the general rule* that in case of total loss by collision *damages* are limited to the value of the vessel, *with interest thereon*, and the net freight pending at the time of collision." (Italics ours.)

The foregoing cases demonstrate that the judicially settled meaning of the word "damages" when used in reference to admiralty collision cases includes interest and it is settled beyond all cavil that where a word has a judicially settled meaning, it must be presumed that Congress has used it in that sense where it appears in a statute.

> *The Abbotsford*, 98 U. S. 440, 444;
> *Kepner* v. *United States*, 195 U. S. 100, 124;
> *United States* v. *Merriam*, 263 U. S. 179, 187.

But that interest in collision cases in admiralty is "damages" within the meaning of the rule of the *Angarica* case is also clear from the language of the rule itself. It is obvious that this court intended the rule it was stating to apply to *some* tort cases. The opinion speaks of claims against the Government, "whether such claims originate in contract or in tort." Yet if the argument of the Government in the present case be sustained and the rule of the *Angarica* case be held inapplicable to *maritime* torts because the admiralty court has discretion in extreme cases to deny interest, then the rule of that case cannot logically be applied to *any* tort case, for under the

decisions of this court the jury in non-maritime tort cases is possessed of the same discretion.

Lincoln v. *Claflin*, 7 Wall. 132, 139;
District of Columbia v. *Robinson*, 180 U. S. 92, 107;
Drumm Floto Commission Company v. *Edmisson*, 208 U. S. 534, 539.

Since discretion exists in reference to the disallowance of interest in all tort cases, whether maritime or non maritime, it must be clear that the existence of this discretionary power is totally irrelevant to the application of the rule of the *Angarica* case, for that rule *by its very terms* is made expressly applicable to some, if not all, tort cases.

POINT III.

IF THE USE OF THE WORD "DAMAGES" IN THE ENABLING ACT HERE IN QUESTION LEAVES ANY DOUBT AS TO THE INTENTION OF CONGRESS, THE OTHER PROVISIONS OF THE STATUTE CERTAINLY SET SUCH DOUBT AT REST.

In view of the judicially settled meaning of the word "damages" in admiralty collision cases, petitioner submits that the provision for "damages" in the statute in question should conclude this case in petitioner's favor; but if doubt be possible, certainly that doubt is resolved by the explicit provision that the "legal damages" shall be awarded

> "upon the same principle and measure of liability with costs in like cases between private parties".

As early as 1819 the governmental practice was to allow interest whenever Congress in an enabling act referred

> "to any principles of settlement from which it can be inferred that interest was intended to be allowed".
>
> Attorney General Wirt, 1 Op. A. G. 268.

Surely the above quoted excerpt from the statute here in question constitutes such a reference.

This court recognized this method of providing for the allowance of interest in *United States* v. *McKee et al.*, 91 U. S. 442.

In that case a private act authorized the Court of Claims to hear a certain claim

> ". . . with full jurisdiction to adjust and settle the same; and, in making such adjustment and settlement, the said court shall be governed by the rules and regulations heretofore adopted by the United States in the settlement of like cases. . . ."

Although the act contained no reference to interest, this Court approved its allowance.

The provision in the present act for costs to the successful party still further fortifies the conclusion that full restitution was intended. There is no right to costs even as against an individual in the absence of statute.

> *Coggill* v. *Laurence*, Fed. Cas. No. 2957, 2 Blatchf. 304.
> *Kneass* v. *Schuylkill Bk.*, Fed. Cas. No. 7876, 4 Wash. 106.
> *O'Neill* v. *Kansas City, etc. R. R. Co.*, 31 Fed. 663.
> *Telsa Electric Co.* v. *Scott*, 101 Fed. 524.
> *Bone* v. *Construction Co.*, 235 Fed. 901.

A fortiori there is no such right as against the Government in the absence of statute.

> *United States* v. *Boyd*, 5 How. 29, 51.
> *United States* v. *Verdier*, 164 U. S. 213, 219.

There are many other cases. Costs are ordinarily an unimportant item. Interest, on the other hand, is usually essential to a full indemnity. Can it be supposed that Congress gave this trifle yet withheld what is essential to a just and full reparation?

There is no room for the application of the maxim *Expressio unius est exclusio alterius*, for costs are not "damages" and so if they are to be given, they must be given separately and *suo nomine*. *The Wanata*, 95 U. S. 600, 615.

The proctor for the Government in the court below sought to raise doubt as to the intention of Congress by referring to a very brief colloquy in the Senate *occurring some four years after the passage of the act here in question*. Strange to say, the court below relied on this colloquy in its opinion. The discus-

sion referred to certain other private relief acts from the text of which provision for the allowance of interest had been stricken out in committee. The colloquy can be quoted *in extenso* without undue extension of this brief:

> "Mr. King: Do I understand that the interest provision has been stricken out of the bills which have just been passed, so that the judgments will not bear interest?
>
> "Mr. Copeland: Yes, the words 'including interest' were stricken out of the bills." *Congressional Record*, 69th Congress, First Session, page 3753.

In *United States* v. *Trans Missouri Freight Ass'n*, 166 U. S. 290, this Court said (p. 318):

> "There is, too, a general acquiescence in the doctrine that debates in Congress are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body.
>
> "The reason is that it is impossible to determine with certainty what construction was put upon an act by the members of a legislative body that passed it by resorting to the speeches of individual members thereof. Those who did not speak may not have agreed with those who did; and those who spoke might differ from each other; the result being that the only proper way to construe a legislative act is from the language used in the act, and, upon occasion, by a resort to the history of the times when it was passed."

In *Mitchell* v. *Great Works Milling & Manufacturing Co.*, 17 Fed. Cas. No. 9662, Judge Story said (p. 498):

> "What passes in Congress upon the discussion of a bill can hardly become a matter of strict judicial inquiry; and if it were, it could scarcely be affirmed, that the opinions of a few members, expressed either way, are to be considered as the judgment of the whole house, or even of a majority. But, in truth, little reliance can or ought to be placed upon such sources of interpretation of a statute. The questions cannot be, and rarely are, there debated upon strictly legal grounds, with a full mastery of the sub-

> ject and of the just rules of interpretation. The arguments are generally of a mixed character, addressed by way of objection, or of support, rather with a view to carry or defeat a bill, than with the strictness of a judicial decision. . . . But in truth, courts of justice are not at liberty to look at considerations of this sort. We are bound to interpret the act as we find it, and to make such an interpretation as its language and its apparent objects require. We must take it to be true, that the legislature intend precisely what they say, and to the extent which the provisions of the act require, for the purpose of securing their just operation and effect. Any other course would deliver over the court to interminable doubts and difficulties, and we should be compelled to guess what was the law from the loose commentaries of different debates instead of the precise enactments of the statute."

See also *Duplex Co.* v. *Deering*, 254 U. S. 443, 474; *Omaha & C. B. St. R. Co* v. *I. C. C.*, 230 U. S. 324; *Aldridge* v. *Williams*, 3 How. 1, 24; *United States* v. *Union Pac. R. R. Co.*, 91 U. S. 72, 79. The rule is the same though the statements be those of the Congressman in charge of the bill.

> *Banco Mexicano* v. *Deutsche Bank*, 263 U. S. 591, 602; *Mutual Benefit Life Ins. Co.* v. *Duffy*, 295 Fed. 881.

The Government has sought to becloud the meaning of words clear and unambiguous in their ordinary and accepted meaning by citing the statement of one only out of ninety-six senators and the statement cited is one *made four years after the passage of the act here involved in reference to an entirely different act.* That cannot be done.

> *Pennsylvania Mutual Co.* v. *Lederer*, 252 U. S. 523, 537.

But even if the cited senatorial statement were relevant, it would still be equivocal. In special acts Congress has sometimes allowed interest, sometimes denied it, sometimes ignored it. No set policy can be discerned.

Out of the ninety-six special acts passed since 1912 when

they began to appear commonly, comparable in phraseology to that here in question, four include interest *co nomine*.

43 Stat. 1369, Colonial Navigation Co. (SS. Lexington) 1924.

43 Stat. 1374, Thompson-Lache Boat Co. (SS. Floyd) 1924.

43 Stat. 1589, Mallory SS. Co. (SS. Nueces) 1925.

44 Stat. 1839, William J. Donaldson (The Theresa) 1927.

Eight explicitly exclude it and eighty-four make no mention of it *co nomine*. It is easy for Congress to say so, if it is its intention to exclude it. *Tiger* v. *Western Investment Co.*, 221 U. S. 286, 311.

In other cases the merits have been considered, damages determined by the Committee and a stated sum has been reported out and voted by Congress directly as relief, sometimes with interest, *e. g.*, American Trans. Co. (SS. A. A. Raven) 44 Stat. 1605, and Senate Report No. 995 of the 69th Congress.

The *Suits in Admiralty Act*, March 9, 1920, 41 Stat. 525, provides for interest at 4%—by judicial construction, from the date of the collision. *Middleton* v. *United States*, 286 Fed. 548, 554. But in *Comus* v. *Lake Frampton*, 1927 A. M. C. 1713, a libel brought under this Act, an owner was allowed by the Circuit Court of Appeals for the Second Circuit 6% interest against the United States under the court's broad equity power because the Government in a cross-libel was recovering under the usual rule 6% per annum as a part of its own damages.

It must be clear that what Congress has done in one case is no guide to what it intends in another. The fact is there is no ambiguity in the present case in the act itself if the judicially settled meanings of the words used are given effect. This absurd attempt to create ambiguity by imputing into the case this belated and equivocal senatorial colloquy, concerning an entirely different act, is the best indication of the extremity of the Government's case.

The fact is that the conflict between the First and Second Circuits is the outgrowth of a mistaken application in the First Circuit of a precedent from the Second Circuit—a precedent

that arose out of a totally different state of facts. The conflict of the circuits is discussed in detail in the remaining section of this brief.

POINT IV.

THE WEIGHT OF AUTHORITY, DEALING WITH SIMILAR STATUTES, SUPPORTS THE PETITIONER AND NOT THE GOVERNMENT

The only live and relevant judicial precedents for the decision herein by the Circuit Court of Appeals for the First Circuit are *Pennell* v. *United States* (D. C. Maine), 162 Fed. 75, and *Nantasket Beach Steamboat Company* v. *United States* (D. C. Mass.), 297 Fed. 656.

It is true that in its brief below and in its applications for certiorari in *United States* v. *Texas Company*, No. 1055, October Term, 1926, and in *New York & Cuba Mail Steamship Company* v. *United States*, 1064 and 1065, October Term, 1926, and in *Commonwealth and Dominion Line, Ltd.*, v. *United States*, No. 630, October Term, 1927, the Government did cite three other cases as supporting its contention that interest should not be allowed under private acts such as that here in question. The three cases referred to are *Whitelaw* v. *United States*, 9 Fed. (2d) 103 (D. C. N. D. Calif.); *Watts* v. *United States* (S. D. N. Y.) 129 Fed. 222; *Nippon Yusen Kabushiki Kaisha* v. *United States* (E. D. N. Y.) 1926, A. M. C. 1008.

The *Whitelaw* case is pretty wide of the mark. That was an action brought under an act of Congress dated June 7, 1924, which conferred jurisdiction upon the District Court, but not, apparently, in admiralty,

> "to hear and determine the claims of American citizens . . . for damages or loss occasioned by or resulting from the seizure, detention, sale or interference with their voyage by the United States of vessels charged with unlawful sealing in the Behring Sea and water contiguous thereto and outside of the three mile limit during the years 1886 to 1896, inclusive, and to enter judgment therefor."

The evidence in that case was held to warrant measuring the damages of the claimant by the value of the probable catch

on the sealing voyage unlawfully interrupted by the Government. Plainly the damages were measured in a highly speculative fashion, and it would be strange, indeed, if interest had been awarded under those circumstances. As a matter of fact no claim for interest was submitted.

There was, moreover, nothing in that case to show that in such a situation interest was any proper part of the damages to be awarded. In the statute itself the meaning of the word "damages" is made doubtful by the fact that the word "loss" appears in apposition with it and there is no reference in the statute, as there is in the statute in the present case, to "any principles of settlement from which it can be inferred that interest was intended to be allowed". Plainly the *Whitelaw* case is not relevant to the question now before this Court.

The same is likewise true of the *Watts* case. The statute there in question provided:

> "The investigation of said claim shall be made upon the following basis: First, the said court shall find the facts attending the loss of the said steamship Foscolia and her cargo; and second, if it shall appear that the responsibility therefor rests with the United States steamship Columbia, the court shall then ascertain and determine the amounts which should be paid to the owners, respectively, of the Foscolia and her cargo, in order to reimburse them for the losses so sustained, and shall render a decree accordingly. Provided, further, that the amounts of the losses sustained by the master, officers, and crew of the Foscolia may be included in such decree."

In that statute there was obviously lacking any general authorization to the court to proceed as a court of admiralty and to assess damages according to its usual rules as between private parties. The directions for the assessment of the claim were very detailed; but all reference to interest was omitted as well as all reference to "any principles of settlement from which it can be inferred that interest was intended to be allowed". It should be noted, also, that the use of the technical term "damages" was avoided and the indefinite term "amounts of losses" was used in its stead. Given the most generous

construction, this statute, in view of the rule laid down in the *Angarica* case, could hardly have been construed to permit the allowance of interest. (See comparison in *The Commonwealth*, 297 Fed. 651 at 654.)

As to the *Nippon* case, that case was decided in the Eastern District of New York in 1926. The opinion in that case has never been reported. The statute involved was, however, in the respects important, identical with that here in question; yet interest was refused.

But the case had been overruled, at the time that the Circuit Court of Appeals for the First Circuit decided the present case, by two decisions of the Circuit Court of Appeals for the Second Circuit, to wit: *Texas Company* v. *United States*, 16 Fed. (2d) 945; *New York and Cuba Mail Steamship Company* v. *United States*, 16 Fed. (2d) 948.

In those cases the private acts were, *mutatis mutandis*, identical with the act in the present case. It was pointed out that interest was an element of the damages to be awarded as between private parties in collision cases in admiralty and since the private acts concerned provided for the assessment of "the legal damages . . . found to be due . . . upon the same principle and measure of liability, with costs, as in like cases in admiralty between private parties", the court held that the plain meaning of the acts was that the claimants should recover interest against the Government. The court also indicated that in its opinion the cases came within the law as set forth in this court in the *Angarica* case as involving statutes in which "interest is given expressly by an act of Congress by the name . . . of damages."

The court said at page 947:

> "By the authority of the statute, the appellee may maintain its libel, as it would between private parties. In a suit between private parties in admiralty growing out of collision, it has long been settled that interest is awarded as part of the measure of damages. The object of the award of damages is to place the injured party in the same pecuniary position as he would have been in but for the collision.

"This principle has been referred to in admiralty as that of the right to a full and complete indemnity. The phrase 'the legal damages . . . found to be due . . . upon the same principles and measure of liability, as in like cases in admiralty between private parties', when given the interpretation intended by Congress in this enactment, included an award of interest, as is allowed in the case of a litigation between private parties in admiralty. The United States is not liable to pay interest in the absence of a statutory provision to that effect, except where it has contracted to pay it, or where the United States submits itself to the jurisdiction of the Court, or if sued, places itself in the position of a private party. *United States* v. *Thekla*, 266 U. S. 328, 45 S. Ct. 112, 69 L. Ed. 313. Interest may be provided for by the name of legal damages. Congress has done so in granting this relief to private parties, where a vessel has been injured in collision with a public vessel. We must give to the language employed its ordinary and accepted meaning. We must presume that Congress intended that the principle of *restitutio in integrum* should be applied, as it is in cases in admiralty of like nature between private parties. *Paquete Habana*, 189 U. S. 453; *Nuesta Senora de Regla*, 108 U. S. 92. . . .

"The present Act of Congress, upon which this libel is maintainable, provides for the jurisdiction, adjudication of conflicting claims of the government and a citizen, and requires such adjudication including the measure of damages, to be made in the same legal method as private controversies are adjudicated. The intention of Congress is clear and explicit to grant *full indemnity* in the award against the United States, if any is made. Indemnity is not complete without interest. The Admiralty Courts in suits against private persons have always followed this rule. We think Congress intended that it should be followed in this instance." (Italics ours.)

These decisions of the Circuit Court of Appeals for the Second Circuit were preceded in that circuit by a decision to the same effect by Judge Mack (S. D. N. Y.) in *The Commonwealth*,

297 Fed. 651, and by *The Friedrich der Grosse*, 1926 A. M. C. 361. There was also *Alaska Commercial Co.* v. *United States*, 1925 A. M. C. 1269 in the Northern District of California in which interest was allowed without discussion. There is also the later decision of the Second Circuit Court of Appeals to the same effect in *Commonwealth & Dominion Line Ltd.* v. *United States*, 20 Fed. (2d) 729, now pending in this Court on writ of certiorari, granted presumably because of the pendency of the present case.

It is plain that the great weight of authority dealing with similar acts, supports the petitioner and not the Government. (The acts involved in the three cases from the Second Circuit Court of Appeals are printed in sequence in the appendix to this brief.) Even at the time of the decision of the First Circuit Court of Appeals in the present case there were two circuit court of appeals cases and three district court cases contrary to the rule it adopted in its decision. In support of its decision there were only the two cases originally referred to—the *Pennell* and *Nantasket* cases, decisions of district courts in the First Circuit.

The statute in the *Pennell* case was not identical with the statute here involved; it provided merely for suit against the Government, but it was sufficiently like it so that the result in the two cases should be identical. Thus, it provided:

> "that in regard to the trial or hearing of said cause, the same rules and modes of proceedings as to evidence, mode of trial, liability for damage, and measurement for damages, and otherwise including the right of appeal, shall apply as in other cases of admiralty between individual owners of colliding vessels, and shall also be determined upon such legal or equitable principles as shall be applicable thereto."

It is difficult to read this language without concluding that interest was recoverable thereunder, but the district judge in the *Pennell* case reached a contrary conclusion by a blind following of the *Watts* case, applying what was probably a correct decision in that case to a statute manifestly of quite different import. Confronted with the accumulation of forty-two years

of interest and not finding the word "interest" specifically in the statute, he brushed aside the provision of the act that "the same rules as to . . . liability for damages and measurement of damages . . . shall apply as in other cases of admiralty between private owners of colliding vessels", adopted the decision of the *Watts* case and disallowed interest. *Plainly this went beyond mere procedure* and it seems therefore clear that the *Pennell* case was incorrectly decided.

In the *Nantasket* case the statute differed in no material respect from the statute involved in the present case. Both the *Pennell* case and the decision of Judge Mack in *The Commonwealth*, already referred to, were urged upon the attention of the district judge. He quite rightly held that there was no distinction between the acts involved in the two cases but chose to follow the decision in the *Pennell* case. The *Watts* case on which the *Pennell* decision was based was not mentioned in the course of the opinion. In fact, in *The Commonwealth* Judge Mack had pointed out that the statutes in that and the *Watts* cases were entirely different. It is therefore plain that the judge in the *Nantasket* case was merely following the *Pennell* decision as a precedent of a district court in the same circuit with himself. The case, therefore, as an authority adds nothing to the *Pennell* case which it blindly follows.

On petition for rehearing in the present case the attention of the court was directed to this Court's refusal of certiorari in the contrary decisions of the Second Circuit Court of Appeals; but the court refused to reconsider its decision. Perhaps the court thought that the question involved had not received on petition for certiorari the careful attention its importance merited; but in view of the obvious public importance of the question presented, it seems clear to petitioner that the writs in these cases were refused because the decisions of the Second Circuit Court of Appeals were plainly in accord with the law as previously expounded by this Court in the *Augarica* case and in accord with the plain meaning of the private acts involved.

POINT V.

THE ALLOWANCE OF INTEREST WILL ACCORD WITH THE DECISIONS OF THIS COURT IN MANY SIMILAR SITUATIONS AND IS NECESSARY TO A FULL AND FAIR REPARATION FOR THE GOVERNMENT'S TORT

There is nothing unheard of in the Government's paying interest on the principal amount of losses inflicted by its wrongful acts. From the earliest days of American maritime jurisprudence interest has been awarded in prize cases quite without statutory authority to the owners of vessels illegally seized and condemned.

The Charming Betsey, 2 Cranch, 64.
The Anna Maria, 2 Wheat. 327, 335.
The Amiable Nancy, 3 Wheat. 546, 560.
The Apollon, 9 Wheat. 362, 377.
The Nuestra Senora de Regla, 108 U. S. 92, 104.
The Paquete Habana, 189 U. S. 453, 467.
The Labuan, Blatchf. Pr. Cas. 165.
The Sybil, Blatchf. Pr. Cas. 615.

Moore in his Digest of International Law, Vol. VI, page 1029, says:

> "Interest, according to the usage of nations, is a necessary part of just national indemnification."

Cf. Moore, International Arbitrations, 339, 4313, 4228, 3765, 1575-6, 1745-6, 1004-5, 1465-6; Hague Court Reports, 228, 234, 297.

The question of interest in the present case is not unlike the situation where a tax payer seeks by suit to recover taxes illegally exacted. This Court has held that the taxpayer in such circumstances is entitled to interest from the time of the illegal exaction. *Erskine* v. *Van Arsdale*, 15 Wall. 75.

In *Miller* v. *Robertson*, 266 U. S. 243, a suit was brought against the Alien Property Custodian under Section 9 of the Trading with the Enemy Act, Chapter 106, 40 Stat. 411, 419, which merely gives to "any person, not an enemy, or alien of enemy . . . to whom any debt may be owing from an enemy,

or ally of enemy," the right to "institute a suit in equity in the District Court . . . to establish the debt so claimed". Although such a suit had been held in *Banco Mexicano* v. *Deutsche Bank*, 262 U. S. 591, 603, to be one against the United States, and although this act makes no reference to interest, this Court held (p. 257 of the *Robertson* opinion) that interest was properly allowed as an element of that compensation which is a fundamental principle of damages.

In *Standard Oil Co.* v. *United States*, 267 U. S. 76, there was a libel upon two policies of marine insurance issued by the Government insuring the SS. Llama and her freight and advances against war risks, under the Act of Sept. 2, 1914, § 293, 38 Stat. 711, 712. This act provides in Section 5:

> ". . . in the event of disagreement as to the claim for losses, or amount thereof, between the said bureau and the parties to such contract of insurance, an action on the claim may be brought against the United States in the District Court of the United States, sitting in admiralty, in the district in which the claimant or his agent may reside. . . ."

No reference is made to interest, yet it was ordered that interest at six percent should be allowed from the date when the loss became payable by the United States.

Seaboard Airline Railway Company v. *United States*, 261 U. S. 299, presented the question of allowance of interest in an action brought under Section 10 of the Lever Act of August 10, 1917, Chapter 53, 40 Stat. 276, 279 which provides that "the President is authorized to requisition foods, feeds, fuels, and other supplies necessary to the Army, Navy, or other public use . . . and he shall ascertain and pay a just compensation therefor". If the compensation so determined is not satisfactory to the owner, he shall be paid seventy-five per centum of the amount so determined, ". . . and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum will make up such amount, as will be just compensation . . . and jurisdiction is hereby conferred on the United States District Courts to hear and determine all such controversies. . . ." Nothing is said as to interest. This

Court held that the plaintiff was entitled to interest at 7 per-cent, saying (p. 306):

> "The requirement that 'just compensation' shall be paid is comprehensive and includes all elements and no specific command to include interest is necessary when interest or its equivalent is a part of such compensation."

The following cases are in accord:

> *Brooks Scanlon Corporation* v. *United States*, 265 U. S. 106, 123;
>
> *Liggett & Myers Tobacco Company* v. *United States*, 274 U. S. 215, 220;
>
> *Phelps* v. *United States*, 274 U. S. 341, 344.

In *United States* v. *Rogers*, 255 U. S. 163, interest at six per centum per annum was allowed from the date of taking where the United States had condemned land for reclamation purposes under the Land Taking Act of August 1, 1888, c. 728, 25 Stat. 357, although nothing was said therein as to interest.

Interest at 6 per cent was also allowed where the United States through the exercise of the war powers vested in the President, had requisitioned merchant vessels under construction. *Hull No. 5 Compagnie General Transatlantique* v. *United States*, 1927 A. M. C. 485 (Ct. of Claims).

There is also the very recent case of *United States* v. *The Thekla*, 266 U. S. 328 (followed in *The Barendrecht*, 11 Fed. (2d) 377). That was a collision case in which the Luckenbach Steamship Company filed a libel against the barque Thekla for collision with the S. S. E. J. Luckenbach. There was a cross-libel by the owners of the Thekla, whereupon the Government intervened and filed a claim to the Luckenbach on the ground that the vessel was under requisition charter to, and in the possession of, the United States at the time of the collision. The Government also adopted as its own the original libel against the Thekla, but the Government expressly disclaimed any intention of submitting itself to the jurisdiction of the court. It appeared on trial that the Government vessel had been in fault. Though there was no enabling act at all in *The Thekla*, this court approved a decree against the Government

not only for the principal amount of the shipowner's losses, but for interest thereon as well. The court, speaking through Mr. Justice Holmes, said (p. 341):

> "the reasons are strong for not obstructing the application of natural justice against the Government by technical formulas when justice can be done without endangering any public interest."

The reasons for not obstructing the doing of justice are just as strong here as there and in the present case there is a clear and unambiguous legislative act providing "for the relief of the owners of the steam lighter Cornelia"

> "under and in compliance with the rules of said court sitting as a court of admiralty; and that the said court shall have jurisdiction to hear and determine the whole controversy and to enter a judgment or decree for the amount of the legal damages sustained by reason of said collision, if any shall be found to be due either for or against the United States, upon the same principle and measure of liability with costs in like cases in admiralty between private parties with the same rights of appeal".

The petitioner submits that the Government has advanced no sound reason, and, indeed, can advance no sound reason, to justify this court's refusing full and fair restitution in the present case in the face of the stated intent of Congress to provide for petitioner's relief, while continuing to give, as in *The Thekla*, such full and fair restitution in the entire absence of legislative authorization, on the basis merely of executive acts.

The Government suing in admiralty always recovers, when successful, interest as a part of its full compensation.

Full and fair "relief of the owners of the steam lighter Cornelia" requires the payment of interest. The demands of justice are the same in the present case as in *The Thekla* and only a strained and artificial view of the statute here involved can discern a Congressional intent to give less than justice requires.

CONCLUSION

The decree of the Circuit Court of Appeals for the First Circuit should be amended to allow interest at the legal rate applied in the District of Massachusetts, with costs to your petitioner.

Respectfully submitted,

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APPENDIX A.

(42 Stat. 1778)

AN ACT FOR THE RELIEF OF THE OWNERS OF THE STEAMSHIP ESPERANZA.

Private, No. 192, 67th Congress.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the claim of the New York and Cuba Mail Steamship Company, owner of the American Steamship Esperanza, against the United States for damages alleged to have been caused by collision between said vessel and the United States destroyer Conner on the 15th day of February, 1918, off Barnegat Light, New Jersey, may be sued for by the owner of the said American steamship Esperanza in the United States District Court for the Southern District of New York, sitting as a Court of Admiralty, and acting under the rules governing such court, and said court shall have jurisdiction to hear and determine such suit and to enter judgment or decree for the amount of such damages and costs, if any, as shall be found to be due against the United States in favor of the owner of the said American steamship Esperanza, or against the owner of the said American steamship Esperanza, in favor of the United States, upon the same principles and measures of liability as in like cases in admiralty between private parties, and with the same rights of appeal: *Provided*, that such notice of the suit shall be given to the Attorney General of the United States as may be provided by order of the said court, and it shall be the duty of the Attorney General to cause the United States attorney in such district to appear and defend for the United States: *Provided further*, that said suit shall be brought and commenced within four months of the date of the passage of this Act.

Approved, February 28, 1923.

APPENDIX B.

(42 Stat. 1569.)

AN ACT AUTHORIZING THE OWNERS OF THE STEAMSHIP TEXAS TO BRING SUIT AGAINST THE UNITED STATES OF AMERICA.

Private, No. 9, 67th Congress.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the claim of the owners of the steamer Texas arising out of a collision between said steamer and the United States steamer Frederick der Grosse, off Tompkinsville, Staten Island, in the harbor of New York, on the third day of September, 1917, for and on account of the losses alleged to have been suffered in said collision by the owners of said steamer Texas by reason of damages to and detention of said steamer may be submitted to the United States District Court for the Southern District of New York, under and in compliance with the rules of said court sitting as a Court of Admiralty; and that the said court shall have jurisdiction to hear and determine the whole controversy and to enter judgment or decree for the amount of the legal damages sustained by reason of said collision, if any shall be found to be due either for or against the United States, upon the same principle and measure of liability, with costs, as in like cases in admiralty between private parties, with the same rights of appeal: *Provided*, that such notice of the suit shall be given to the Attorney General of the United States as may be provided by order of the said court, and it shall be the duty of the Attorney General to cause the United States Attorney in such district to appear and defend for the United States: *Provided further*, that said suit should be brought and commenced within four months of the date of the passage of this Act.

Approved, November 17, 1921.

APPENDIX C.

(42 Stat. 1796)

AN ACT FOR THE RELIEF OF THE COMMONWEALTH AND DOMINION LINE (LIMITED), OWNER OF THE BRITISH STEAMSHIP PORT PHILLIP.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the claim of the Commonwealth and Dominion Line (Limited), owner of the British Steamer Port Phillip against the United States for damages and loss alleged to have been caused by the collision of said vessel with the United States steam collier Proteus in New York harbor on October 16, 1918, may be sued for by the said owner of the British steamer Port Phillip in the District Court of the United States for the Eastern District of New York, sitting as a court of admiralty and acting under the rules governing such court, and said court shall have jurisdiction to hear and determine such suit to the extent only of such damages suffered other than claims for demurrage to said vessel and to enter a judgment or decree for the amount of such damages and costs, if any, as shall be found to be due against the United States in favor of the owner of the British Steamer Port Philip or against said owner in favor of the United States, upon the same principles and measures of liability as in like cases in admiralty between private parties and with the same rights of appeal: *Provided*, That such notice of the suit shall be given to the Attorney General of the United States as may be provided by order of the said court, and it shall be the duty of the Attorney General to cause the United States attorney in such district to appear and defend for the United States: *Provided further*, That said suit shall be brought and commenced within four months of the date of the passage of this Act.